



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201228044

APR 19 2012

T:EP:RA:T3

U.I.L. 408.03-00

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Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXXXXXX

Individual M = XXXXXXXXXXXXXXXXXXXXXXXX

IRA X = XXXXXXXXXXXXXXXXXXXXXXXX

Account C = XXXXXXXXXXXXXXXXXXXXXXXX

Amount D = XXXXXXXXXXXXXXXXXXXXXXXX

Bank B = XXXXXXXXXXXXXXXXXXXXXXXX

Company F = XXXXXXXXXXXXXXXXXXXXXXXX

Company E = XXXXXXXXXXXXXXXXXXXXXXXX

Date 1 = XXXXXXXXXXXXXXXXXXXXXXXX

Date 2 = XXXXXXXXXXXXXXXXXXXXXXXX

Dear xxxxxxxxxxxx:

This letter is in response to your letter dated xxxxxxxxx, as supplemented by
correspondence dated xxxxxxxxx, submitted on your behalf by your authorized

representative, in which you request a waiver of the 60 day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (Code). . The following facts and representations have been submitted under penalties of perjury in support of the ruling requested.

Taxpayer A, age 74, is a widow whose husband handled all financial matters prior to his death. Taxpayer A maintained IRA X with Company E. IRA X held assets worth Amount D. On Date 1, Taxpayer A requested Company E make a direct rollover of the total cash available from her IRA X into Account C. Company E liquidated IRA X and made the transfer in a series of transactions over the next few weeks to Account C.

Taxpayer A represents that at the time of transfer she did not know that Company F was not an eligible non-bank IRA custodian. She further represents that Individual M, with whom she became friendly over a period of months, fraudulently persuaded her to transfer the funds from IRA X to Account C. Individual M also led Taxpayer A to believe that Company F had existed for a long time; however, Company F actually had existed for less than a year.

Taxpayer A states that she never intended to make a taxable withdrawal and she wanted to keep her funds in an IRA account. Taxpayer A states that she relied upon Individual M for financial advice and she thought that Individual M was protecting her assets. Account C was in fact an account with Bank B in the name of Company F and Individual M not Taxpayer A had control of the account.

Taxpayer A asserts that she learned that Individual M had a history of defrauding the elderly when her son became suspicious and investigated. In conjunction with this investigation, Taxpayer A's son discovered that Individual M had invested Taxpayer A's funds in gold and other collectibles and had taken a portion of Taxpayer A's money either through charging commissions or overstating the purchase prices of items. In addition, Taxpayer A learned that Individual M had previously been convicted of fraud and served jail time.

Upon learning that Individual M defrauded Taxpayer A, her son assisted Taxpayer A with liquidating sufficient gold in order for Taxpayer A to restore her IRA and transferred the funds back into IRA X. On Date 2, Taxpayer A transferred Amount D back into IRA X with Company E.

Documentation submitted substantiates Taxpayer A's representations.

Based upon the foregoing facts and representations, Taxpayer A requests that the Service waive the 60 day rollover requirement with respect to the distribution of Amount D from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distribute, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if-

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual received the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not included in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur

after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R. B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including : (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a rollover of Amount D was due to the fact that she was misled and defrauded by Individual M.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement were met, the contribution of Amount D to IRA X on Date 2 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

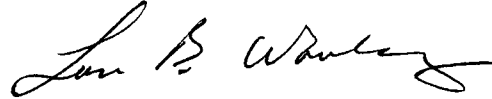
This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this letter is being sent to your authorized representative pursuant to a power of attorney on file in this office.

201228044

If you have any questions concerning this ruling, please contact xxxxxxxxxxxxxx,
SE: T: EP: RA: T3, at xxxxxxxxxxxxxxxxxxxx.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice 437

Cc: xxxxxxxxxxxxxxxxxxxx